

TAB 1

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

**THOMAS E. PEREZ, SECRETARY OF
LABOR, UNITED STATES DEPARTMENT
OF LABOR,**

Plaintiff,

v.

**DAVISON DESIGN & DEVELOPMENT,
INC., a corporation; and GEORGE M.
DAVISON, individually and as a Corporate
Officer of the aforementioned corporation,**

Defendants.

Judge Nora Barry Fischer

Civil Action No. 2:13-CV-1118

Electronically Filed

DECLARATION OF FRANK VESCI

I, Frank Vescio, pursuant to 28 U.S.C. § 1746, depose and state as follows:

1. My name is Frank Vescio. I am over 21 years of age and competent to make this declaration. This declaration is based upon my personal knowledge and is true and correct.
2. I am the President of Davison Development & Design, Inc. ("Davison").
3. Davison is headquartered in Pittsburgh, Pennsylvania.
4. Davison's business consists primarily of providing research, development, and design services to aspiring inventors who seek help in realizing their ideas and presenting them to corporations and other such entities.
5. Davison provides these services to aspiring inventors primarily in the form of two different service packages. Sales of these packages accounted for ninety-eight percent (98%) of Davison's annual total revenues in 2011, 2012, and 2013.

6. Any individual or entity can contract for Davison's services, as the company is fully open to the general public, and sells its services directly to such clients. In the past five years alone, Davison has entered into contracts for these packages with 58,865 individual clients.

7. The specific services performed within each package vary depending on the nature and sophistication of the invention at issue and the progress that the client has already made with his or her idea. Davison customizes its services in this regard for each individual client, and thus dispenses its services to the individual consumers of them.

8. The first package that Davison offers covers pre-development and representation services. The specific services provided may include: (1) reviewing whether similar products are available for sale and the component materials, advertising, pricing, and packaging of those products; (2) reviewing patent information related to the product; (3) identifying a target corporation that would be willing to receive information on the product and consider it for licensing; and (4) engaging in one-on-one sessions with the inventor concerning his or her product and development planning.

9. Davison also creates an Idea to Product Portfolio for clients that collects and assembles the results of these various services into a format that makes it easier for clients to consider the challenges ahead more fully and determine whether to pursue continued product development.

10. Davison also offers a second-phase agreement. Although the specific services performed may vary based on the client's needs, this package generally includes more intensive work on developing and creating presentation materials, a product sample, a packaging sample, and other related services so that the client's product can be presented to corporations and other entities that might be interested in licensing the product idea.

11. For the presentation materials, Davison's Development Team may: (1) review the proposed product, its features and functions, and the abilities of the target corporation to manufacture the product; (2) identify the specific objective that the product is designed to meet (i.e., the problems that it will solve); (3) create preliminary product and packaging designs, which may include efforts to make the product more cost-effective; and (4) create virtual, three-dimensional renditions of the product and packaging and full color prints of them for client approval.

12. The second-phase work on a product sample may involve: (1) analyzing the product to identify cost-efficient and effective means of producing it in line with the target corporation's manufacturing methods; (2) creating production drawings and/or Computer Aided Drawings ("CAD"); (3) transferring production and/or CAD drawings to computer code for use in the mechanical process of producing the product sample; (4) designing circuit boards if applicable to the product; (5) building the actual product sample, including preparing the fabrication machines, preparing the raw materials, and then creating the necessary parts; (6) assembling and providing a professional finish to the product sample; and (7) taking photographs of the product sample.

13. For the packaging samples, Davison's Packaging Team may: (1) analyze the appropriate packaging style, considering factors like product size, weight, and fragility; (2) create production and/or CAD drawings of packaging; (3) transfer production and/or CAD drawings to computer code for use in the mechanical process of producing the packaging sample; (4) build the actual packaging sample, including preparing the fabrication machines, preparing the raw materials, and then creating the necessary parts; (5) assemble and provide a professional finish to the packaging sample; and (6) take photographs of the packaging sample.

14. As part of the second-phase agreement Davison will finalize the product and packaging samples, by: (1) placing those items together to create a final product; (2) performing an integrity review of the final product; and (3) preparing an appropriate shipping container. The client will also receive a final Executive Summary that summarizes the problem that the product solves, highlights the product's key features and components and the composition of them, and provides full color photographs of the product and packaging. Additionally, Davison may provide production quotes for acquired ideas if requested and/or information for use in a provisional patent application.

15. Davison also offers additional services related to the above two packages, such as repairing and recreating product samples produced as part of these packages on an as-needed basis.

16. These two packages are only sold to Davison's inventor clients, and are not resold in any form. Likewise, none of the items produced as part of these processes (including the prototype inventions, packaging samples, and related materials) are ever sold or resold to any other entities.

17. Davison does not create products for sale or resale as part of these packages. Further, Davison is not involved in the actual manufacture or sale of its clients' products whatsoever; those matters are left to Davison's clients to separately contract with the corporations or other entities that review and license their product ideas. The only clients that Davison serves are the individuals who purchase its service packages, and those services end once Davison completes the design and development services identified in the service packages.

18. Davison does not guarantee its clients that their ideas will be successful, or that they will turn a profit on them. Rather, it simply informs them that it will make its best efforts to

professionally design a sample, packaging, and presentation materials that will give the potential licensee a clear understanding of the idea. In short, Davison meets the needs of its clients by providing them the foundational services that they need to achieve future success with their inventions.

19. In addition to its two service packages, Davison also creates and licenses inventions on its own on a limited basis. Davison does not manufacture, sell, or resell these inventions, but rather licenses its product ideas to other entities who manufacture and sell the products.

20. In its business dealings with individual inventor's interactions, Davison must comply with certain laws that regulate how invention promotion companies sell their services. The American Inventors Protection Act of 1999, 35 U.S.C. § 297, specifically requires Davison to disclose certain information to potential clients before contracting with them; although this information changes periodically to comply with the Act, current copies of these disclosures are attached as Exhibit A.

21. Davison also must comply with certain state-specific laws (e.g., Ohio Revised Code § 1345.61 *et seq.*) that govern its conduct in those states, and it has developed different contracts for those states that incorporate all such requirements in those jurisdictions.¹

22. To sell its service packages to clients, Davison currently employs approximately one-hundred fifty (150) Sales Representatives. These individuals are also referred to with the title of "Director of New Products."

¹ States that have state-specific laws include, currently, California, Illinois, Iowa, Kansas, Minnesota, Nebraska, North Carolina, North Dakota, Ohio, Oklahoma, Tennessee, Texas, and Virginia.

23. Sales Representatives primarily communicate with clients over the telephone.

Clients and prospective clients also occasionally visit Davison's offices for in-person meetings with Sales Representatives to discuss Davison's services; in 2011, for example, five hundred sixteen (516) individual clients or prospective clients visited Davison's offices for this reason.

24. Sales Representatives' duties consist entirely of speaking with current and prospective clients, discussing the clients' invention ideas with them, and, as appropriate, selling one or both of Davison's two service packages to them, and handling minor paperwork associated with some sales.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: December 26, 2013.



12/26/2013

FRANK VESCI

EXHIBIT A

INVENTOR INFORMATION

You should read all of this information before proceeding.

Davison complies with all regulatory codes. 35 United States Code §297 requires that specific information be provided to you prior to contracting for our services:

Davison does not offer evaluations of idea submissions for commercial potential; therefore, the total number evaluated in the past five years is zero (0), the number of positive evaluations is zero (0) and the number of negative evaluations is zero (0). The total number of customers who have contracted with Davison in the past five years is fifty eight thousand eight hundred sixty five (58,865). The number of customers who received a net financial profit as a direct result of the company's services over the company's history, since 1989, is twenty eight (28). Since 1989, the total number of customers known by Davison to have received license agreements for their product ideas as a direct result of Davison's services is seven hundred forty one (741).

It is Davison's normal practice to seek more than one contract in connection with a submitted idea. Those contracts are:

Pre-Development and Representation- Davison will: (a) provide information on products and patents relevant to the development of the product idea; and (b) attempt to locate a licensee for the product idea after it is fully developed. Davison charges a fee of seven hundred and ninety five dollars (\$795) plus a ten percent commission of all money received by the client on the sale or license of the product.

Types of Second Phase Agreements- Depending upon the degree of client preparation and the difficulty of the concept, Davison typically offers either: (a) New Product Sample Agreement- Davison offers to professionally design and construct a product sample, graphics, packaging and presentation materials; (b) Integrated Product Rendering agreement- Davison offers to prepare design images and graphics suitable for presentation of the idea; or, (c) Custom agreement- Davison offers to perform services in one or more areas of video, design work, graphics or package preparation. While the fees for these services are individually quoted based upon the complexity, type and anticipated design work and materials to be used in designing and constructing the invention, the fees typically range from eight thousand dollars (\$8,000) to fifteen thousand dollars (\$15,000).

Repackaging/refurbishment- For three hundred and eighty five dollars (\$385) we will create an additional set of graphics/packaging and, if necessary, refurbish/repair a product sample for a presentation to an additional potential licensee.

Representation Agreement- Clients who have quantities of professionally manufactured products and are looking for licensing or distribution channels may be offered this service in lieu of all other services. The service includes targeting potential corporations, presenting the product to potential licensees or distributors, as requested, and attempting to negotiate agreements for the license or distribution of the manufactured product. The fee is typically five thousand, eight hundred and fifty dollars (\$5,850) plus a ten percent commission on all money received by the client on the sale or license of the product.

Davison Design and Development, Inc. was previously known as Davison & Associates, Inc., operating from the same address, 595 Alpha Drive, RIDC Park, Pittsburgh, PA 15238.